

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF Section 101 of the  
*Courts of Justice Act* and Section 243 of the *Bankruptcy and Insolvency Act*

BETWEEN:

**TREZ CAPITAL LIMITED PARTNERSHIP and COMPUTERSHARE TRUST COMPANY OF  
CANADA**

Applicants

and

**WYNFORD PROFESSIONAL CENTRE LTD. and GLOBAL MILLS INC.**

Respondents

**SECOND FURTHER SUPPLEMENTARY MOTION RECORD  
Motion Returnable April 28, 2015**

March 30, 2015

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Lawyers to Canada Revenue Agency

# INDEX

Court File No. CV-14-10493-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF Section 101 of the  
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B E T W E E N:

**TREZ CAPITAL LIMITED PARTNERSHIP and COMPUTERSHARE TRUST COMPANY OF  
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Respondents

**INDEX**

<b>DOCUMENT</b>	<b>EXHIBIT/TAB</b>
<b>Reply Affidavit of Denise Lash, sworn March 25, 2015</b>	<b>1</b>
Email correspondence between Dominique Michaud and Shawn Pulver dated March 18 and 20, 2015 and the Financial Statements of Wynford Professional Centre Ltd. (Unaudited) Year ended December 31, 2011	A

# TAB 1



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN

**TREZ CAPITAL LIMITED PARTNERSHIP and COMPUTERSHARE TRUST COMPANY OF  
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Respondents

**REPLY AFFIDAVIT OF DENISE LASH  
(Sworn on March 25, 2015)**

I, **Denise Lash**, of the City of Toronto, MAKE OATH AND SAY AS FOLLOWS:

1. I swore an Affidavit in these proceedings on March 2, 2015 (the "**Original Affidavit**"), where I provided my opinion that it was unreasonable that the Lender and/or its solicitor did not make further inquiries with respect to obvious defects on the face of the Status Certificate prior to advancing loan funds to the Respondent, Wynford Professional Centre Ltd.

2. I have reviewed the Reply Affidavit of Audrey Loeb, sworn March 18, 2015 (the "**Loeb Reply Affidavit**") in response to the Original Affidavit. My comments herein are in response to the Loeb Reply Affidavit. Capitalized terms not defined herein refer to terms that were defined in the Original Affidavit.

3. At paragraph 6 of the Loeb Reply Affidavit, Ms. Loeb attempts to draw a distinction between the Status Certificate and its attachments, which form part of the Status Certificate. I

agree with Ms. Loeb that recipients of a status certificate need not satisfy themselves that the statements made in the status certificate are correct; however, if a recipient of a status certificate intends to rely on same, the recipient cannot rely only on a portion of the status certificate in its favour while simultaneously disregarding obvious defects in the remainder of the status certificate. The entire status certificate must be read, and relied on, as a whole, with due regard to the attachments included in the status certificate.

4. It is therefore incumbent upon a recipient of a status certificate to carefully review the attachments thereto, which, in addition to providing important financial information about a condominium corporation, contains other important information with which a purchaser or mortgagee would be bound. If clear issues with respect to the attachments to the status certificate are discovered upon review of same, further inquiries should be made by a purchaser or mortgagee. The Lender relied on an outdated reserve fund balance and outdated audited financial statements. In my opinion, by relying on this outdated information, the Lender could not have had a reasonable expectation that MTCC 1037, and as a result, the Wynford Units, were financially sound.

5. In paragraphs 8-10 of the Loeb Reply Affidavit, Ms. Loeb asserts that the reserve fund and the audited financial statements of MTCC 1037 were "of far lesser importance to a lender" than information with respect to common expense arrears. While the representation in the Status Certificate that there were no common expense arrears may have been subjectively *more* important to the Lender in these circumstances, it does not, however, follow that the reserve fund balance and the audited financial statements are not important at all or are otherwise unworthy of review. Rather, these documents are and ought to be perceived as significant to a prospective mortgagee or purchaser; this is evidenced through the legislature's requirement to include same in the status certificate.

6. Furthermore, I vehemently disagree with Ms. Loeb's assertion at paragraph 10 that a review of the reserve fund balance and the audited financial statements of the condominium corporation is not germane when lending to a unit owner, rather than the condominium corporation. This information is fundamental to the ongoing operations of a condominium corporation and, as a result, is therefore fundamental to unit owners. Even though there would not have been unit-specific information, each unit has a direct interest in the reserve fund and the financial status of a condominium corporation. For each additional unit that a unit owner owns in a condominium corporation, these documents become increasingly more significant, as the owner's stake in the condominium corporation's financial assets and liabilities is correspondingly increased. Inadequate reserve funds, arrears in common expense receivables, or deficits in MTCC 1037's operating budget all have a significant and direct impact, as well as potential liability, on Wynford as the majority unit owner. If the Lender made further inquiries, which in my opinion, it ought to have made, significant financial issues would have been uncovered.

7. Paragraph 22(n) of the Commitment Letter requires, *inter alia*, "Certified" financial statements from the Borrower and Guarantors. Paragraph 22(i) requires historical operating statements for the "Subject Property". Ms. Loeb contends at paragraph 11 of the Loeb Reply Affidavit that historical operating statements for the "Subject Property", does not refer to the financial statements of MTCC 1037. If historical operating statements does not refer to MTCC 1037, it follows then, that it refers to the historical operating statements for the Wynford Units.

8. I have been provided with a several emails between Shawn Pulver and Dominique Michaud with respect to the financial statements provided by Wynford to the Lender as part of the due diligence process. Based on my review of the emails and attachments thereto, attached as **Exhibit "A"**, it appears that the only financial statements provided were with respect to

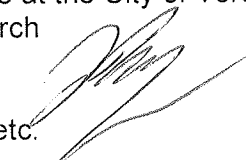
Wynford's 2011 operating expenses (the "Statements"). The Statements were unaudited and disclosed that no review engagement was performed by the chartered accountant who prepared same. The Statements appear to satisfy only a portion of paragraph 22(n) of the Commitment Letter: financial statements from the Borrower (though they do not appear to be "Certified"). However, the due diligence requirement in paragraph 22(i) appears to remain outstanding. Historical operating statements **for the Wynford Units** would have shown revenue and expenses with respect to the Wynford Units up to the period ending December 31, 2012; significant outstanding common expenses payable for the Wynford Units would have been evident. Further, the Statements only included a line item expense entitled "Common element condominium fees" without a corresponding line item representing common expenses owing; it was therefore impossible for the Lender to confirm that common expenses were not outstanding for the Wynford Units.


9. At paragraph 12, Ms. Loeb asserts that the Applicant's main concern was the "equity in the units...". As a unit in a condominium corporation, the equity in the units is inherently tied to the reserve fund balance and the financial liabilities of the condominium corporation; in this regard, the outdated audited financial statements of MTCC 1037 and the outdated reserve fund balance should have been a significant concern to the Lender which ought to have resulted in further inquiries being made by the Lender.

10. I swear this affidavit in reply to the Loeb Reply Affidavit and for no other or improper purpose.

SWORN before me at the City of Toronto,  
this 25<sup>th</sup> day of March  
2015.

A Commissioner, etc.

  
Joshua Milgrom  
LSUC # 64158

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\_\_\_\_\_  
Denise Lash

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN

**TREZ CAPITAL LIMITED PARTNERSHIP and COMPUTERSHARE TRUST COMPANY OF  
CANADA**

Applicants

and


**WYNFORD PROFESSIONAL CENTRE LTD. and GLOBAL MILLS INC.**

Respondents

**ACKNOWLEDGEMENT OF EXPERT'S DUTY**

- 1. My name is Denise Lash. I live at Toronto, in the province of Ontario.
- 2. I have been engaged by or on behalf of McDonald Sager Manis LLP to provide evidence in relation to the above-noted court proceeding.
- 3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
- 4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date March 25, 2015




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Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

**TREZ CAPITAL LIMITED PARTNERSHIP** - and -  
**and COMPUTERSHARE TRUST COMPANY OF CANADA**  
Applicants

**WYNFORD PROFESSIONAL CENTRE LTD. and**  
**GLOBAL MILLS INC.**

Respondents

Court File No. CV-14-10493-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**Proceedings Commenced at Toronto**

**REPLY AFFIDAVIT OF DENISE LASH**

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Lawyers for Metro Toronto  
Condominium Corporation No. 1037

# TAB "A"

THIS IS EXHIBIT "A" REFERRED TO  
IN THE REPLY AFFIDAVIT OF DENISE LASH  
SOLEMNLY AFFIRMED BEFORE ME THIS  
25<sup>th</sup> DAY OF MARCH 2015

  
\_\_\_\_\_  
A Commissioner, etc  
*Joshua Milgrom*



## Denise Lash

---

**From:** Dominique Michaud [<mailto:dmichaud@robapp.com>]  
**Sent:** March-20-15 4:12 PM  
**To:** Shawn Pulver  
**Cc:** Irving Marks; Debora Miller-Lichtenstein  
**Subject:** RE: Affidavit of Audrey Loeb

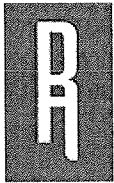
Shawn:

The financial statements are attached.

The Lender obtained statements of operating expenses for Wynford for 2011 (the "**2011 Wynford Operating Statement**"). At the time the Wynford Loan was completed in March 2013, the Lender was advised by Norma that the statements of operating expenses for Wynford for 2012 were not yet prepared as Wynford's fiscal year only ended on December 31, 2012. In the Lender's experience of dealing with borrowers, it is common for a privately held corporation such as Wynford to take as long as 6 months to complete its operating statements after the end of the company's fiscal year. Accordingly, the fact that the 2012 operating statements were not available in March 2013 was not surprising to the Lender at the time the Lender completed the Wynford Loan.

Please let us know about the cross-examinations.

Dom



**Dominique Michaud**  
 T. 416.360.3795  
 E. [dmichaud@robapp.com](mailto:dmichaud@robapp.com)

**ROBINS APPLEBY**  
 BARRISTERS + SOLICITORS

**From:** Shawn Pulver [<mailto:SPulver@msmlaw.net>]  
**Sent:** Friday, March 20, 2015 3:27 PM  
**To:** Dominique Michaud  
**Cc:** Irving Marks; Debora Miller-Lichtenstein  
**Subject:** RE: Affidavit of Audrey Loeb

Dom:

Further to our call, I confirm that I will be speaking to Ms. Lash on Monday and confirm with you by the end of the day whether we intend to cross-examine Ms. Loeb and your other affiants.

As I mentioned on our call, in paragraph 11 of Ms. Loeb's responding report, she takes the position that the "subject property which was to be subject to the due diligence was not MTCC 1037, but rather Wynford and the Wynford Units themselves...." Can you and Irv please confirm whether you are prepared to produce a copy of the financial statement(s) that were provided to Trez by Wynford Professional Centre as part of the due diligence process. If no such statements were produced to Trez, then please confirm same.

Finally, in terms of my client's position on our motion returnable April 28, 2015, paragraphs 4-6 of the affidavit of Mr. Naraine sworn March 19, 2015 confirm that our client is prepared to proceed at the motion on a without prejudice

assumption that fraud, negligence and bad faith can be subsequently established on the action that we are currently intending to serve on Norma and Ronauld.

I look forward to your response.

Best regards,

Shawn Pulver | Partner | T. 416.364.1077 | [spulver@msmlaw.ca](mailto:spulver@msmlaw.ca)

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**From:** Dominique Michaud [<mailto:dmichaud@robapp.com>]  
**Sent:** March-18-15 4:35 PM  
**To:** Shawn Pulver  
**Cc:** Irving Marks  
**Subject:** Affidavit of Audrey Loeb

Shawn:

Attached is the reply affidavit of Audrey Loeb sworn March 18, 2015. After you review, please contact me to discuss whether we will need to cross-examine.

Regards,



**Dominique Michaud**  
T. 416.360.3795  
E. [dmichaud@robapp.com](mailto:dmichaud@robapp.com)  
**ROBINS APPLEBY**  
BARRISTERS + SOLICITORS

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Financial Statements of

**WYNFORD PROFESSIONAL  
CENTRE LTD.**

(Unaudited - see Notice to Reader)

Year ended December 31, 2011



GEOFF CREWE  
chartered accountant

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Fax 416-497-0120  
www.gcrewe.com

**NOTICE TO READER**

On the basis of information provided by management, I have compiled the balance sheet of Wynford Professional Centre Ltd. as at December 31, 2011 and the statement of operations and deficit for the year then ended.

I have not performed an audit or a review engagement in respect of these financial statements and, accordingly, I express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

Toronto, Canada  
September 27, 2012

Geoff Crewe  
Chartered Accountant  
Licensed Public Accountant

WYNFORD PROFESSIONAL CENTRE LTD.

BALANCE SHEET

(Unaudited - see Notice to Reader)

December 31, 2011

ASSETS

Cash	\$ 3,646
Accounts receivable	37,985
HST receivable	515,371
Other receivable	1,508,011
Construction lien holdback and deposits	88,620
	<u>2,153,633</u>
Land	1,319,248
Building	6,519,444
Construction in progress	3,575,000
Equipment	21,175
	<u>11,434,867</u>
Less accumulated amortization	(132,507)
	<u>11,302,360</u>
	<u><u>\$ 13,455,993</u></u>

LIABILITIES

Accounts payable and accrued liabilities	\$ 1,154,435
Mortgage payable	9,602,971
Tenant deposits	72,219
	<u>10,829,625</u>

SHAREHOLDERS' EQUITY

Share capital	2,709,180
Deficit	(82,812)
	<u>2,626,368</u>
	<u><u>\$ 13,455,993</u></u>

See accompanying note to financial statements.

WYNFORD PROFESSIONAL CENTRE LTD.

STATEMENT OF OPERATIONS AND DEFICIT

(Unaudited - see Notice to Reader)

Year ended December 31, 2011

<b>Revenue</b>	
Sales	\$ 3,100,000
Rental	853,721
Parking, signage and other	33,144
	<u>3,986,865</u>
<b>Expenses</b>	
Cost of sales	1,925,918
Mortgage interest and financing fees	693,025
Common element condominium fees	570,923
Property taxes	496,403
Amortization	132,507
Commissions	126,830
Professional fees	89,717
Utilities	18,332
Other	13,213
Repairs and maintenance	2,809
	<u>4,069,677</u>
Loss for the year	(82,812)
Deficit, beginning of year	<u>-</u>
Deficit, end of year	<u><u>\$ (82,812)</u></u>

See accompanying note to financial statements.

**WYNFORD PROFESSIONAL CENTRE LTD.****NOTE TO FINANCIAL STATEMENTS**

(Unaudited - see Notice to Reader)

Year ended December 31, 2011

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These financial statements have been prepared for submission with the Company's income tax return and do not necessarily follow the form or disclosures required by Canadian generally accepted accounting principles.

On January 26, 2011, Highland Creek Homes Ltd. filed Articles of Amendment to change its name to Wynford Professional Centre Ltd.

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**MOTION RECORD**

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